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chattel from the subsequent converter. It is submitted that a second action should be allowed unless the present defendant can show that it is inequitable.⁹

The case of suits in *indebitatus assumpsit* and *trover* against the same defendant must be distinguished. Here judgment in one clearly and justly merges that cause of action.¹⁰ But in general the arguments above given apply with equal force to the case of a judgment in *indebitatus assumpsit* while the original tortfeasor is still in possession of the property, followed by an action of *replevin* before satisfaction.¹¹ Here it is more difficult to decide whether *replevin* is allowed even after an action of *trover*. The cases allowing *replevin*,¹² however, where the chattel at the time of the prior judgment was in the hands of a third party, do not rely on this fact, and it seems to afford no basis for a distinction.¹³ In fact there are well-considered *dicta*¹⁴ and at least two decisions that an unsatisfied judgment does not bar *replevin*.¹⁵ The contrary doctrine places far too much emphasis on the questionable vexation of a delinquent defendant, and far too little on the right of the injured plaintiff to his property or its value. It is, in effect, forcing on a plaintiff a sale of his property on credit to a debtor of doubtful solvency, when he has asked for compensation for the loss of that property.

ENFORCEMENT BY ONE STATE OF PENAL STATUTES OF ANOTHER. — The rule that penal statutes of one state will not be enforced in another is well settled, but what statutes are included under this head is a question which has divided the courts. The Supreme Court of the United States¹ and the Privy Council of England² limit the term "penal" to those statutes forbidding and punishing acts against the state. In most state courts the definition covers any statute the purpose of which is to prevent forbidden acts by inflicting penalties and punishment.³ The ques-

⁹ See *Huffman v. Hughlett*, 11 Lea (Tenn.) 549. *Contra*, *Terry v. Munger*, 121 N. Y. 161.

¹⁰ *State Bank of Council Grove v. Rude*, 23 Kan. 143.

¹¹ The same point is presented by an action of *trover*, *indebitatus assumpsit*, or *replevin* against one who purchases after a judgment in *indebitatus assumpsit* against the original tortfeasor in possession. If title passed on the prior judgment the later action would not lie.

¹² See cases cited in note 5, *supra*.

¹³ But see 16 HARV. L. REV. 131; 3 HARV. L. REV. 326. The view that judgment in *trover* against a tortfeasor in possession passes title probably developed from the early doctrine that possession of chattels gives title. See 3 HARV. L. REV. 23, 24.

¹⁴ See *Hepburn v. Sewell*, 5 Harr. & J. (Md.) 211, 212; *Drake v. Mitchell*, 3 East, 251, 258.

¹⁵ *Ledbetter v. Embree*, 12 Ind. App. 617, 40 N. E. 928; *Goff v. Craven*, 34 Hun (N. Y.) 150. *Contra*, *Rogers v. Moore*, Rice (S. C.) 60; *Foreman v. Neilson*, 2 Rich. Eq. (S. C.) 287.

¹ See *Huntington v. Attrill*, 146 U. S. 657, 13 Sup. Ct. 224. This point in the Supreme Court decision is *dictum*, since the case only decided that a judgment on such a statute must be given full faith and credit under the constitution. See MINOR, *CONFLICT OF LAWS*, § 10, n. 3.

² See *Huntington v. Attrill*, [1893] A. C. 150.

³ *Derrickson v. Smith*, 27 N. J. L. 166; *Halsey v. McLean*, 94 Mass. 438; *Bird v. Hayden*, 1 Rob. (N. Y.) 383; *Cary v. Schmeltz*, 141 Mo. App. 570, 125 S. W. 532.

tion is not one merely of scholastic definition. It should be determined by the general principles which govern the enforcement by one sovereign of rights created by another.

By a principle of private international law common to all countries, it is customary for one nation to give effect to foreign rights founded on those broad rules of justice which are accepted by all nations.⁴ The common law has adopted this principle and has made it definite, at least to the extent that common-law rights acquired in one state must be enforced in another unless contrary to its public policy.⁵ Furthermore, many remedial rights given by statute are also enforced, which though not given by the common law are an extension of the same principles.⁶ One state, however, cannot punish as a crime an act committed in another state.⁷ It would be punishing an act over which it had no jurisdiction and in which it had no interest, contrary to that principle of the common law which limits a state's right to punish to those wrongs committed against itself or its people.⁸ A state passes also a great number of statutes to regulate its internal affairs and protect itself and its people from harm. The same principle that prevents one state from punishing crimes against another would prevent the enforcement of foreign police regulations. A penalty for a violation of such regulations is no less a punishment of the defendant when the fine instead of going to the state is given to one of the other parties interested in the suit. When the money exacted from the defendant is not recompense for damage he has caused, it must have been exacted as a punishment and a preventative for the future.

In a recent case a statute made directors responsible for the full liabilities of the corporation unless they filed with the secretary of state a report showing its financial condition and other matters. It was held in accordance with the Supreme Court definition that this statute was not penal and was therefore enforceable in another state. *The Great Western Machine Co. v. Smith*, 124 Pac. 414 (Kan.). This statute places on the directors a heavy burden which cannot be compensation for damage they have caused, because many of the contracts may have been made before the time for filing the report. The creditor is given a right he did not expect or bargain for in addition to his just common-law right. Clearly on the reasoning followed above, the operation of such a statute should be confined to the state where it is enacted.

It may be argued that when the state allows a private person to exact punishment it confers on him part of its right to punish, and that this right being personal should be transitory and enforceable anywhere. But a state cannot punish acts outside of its own jurisdiction, and it is most unlikely that the statute was intended to give such persons a broader right than the state itself has. The individual's right is subsidiary to the state's. The state confers the right on the individual merely as one method of enforcing its police power and intends that right

⁴ See MINOR, CONFLICT OF LAWS, § 4.

⁵ See 1 WHARTON, CONFLICT OF LAWS, 3 ed., §§ 11, 1a.

⁶ *Dennich v. Railroad Co.*, 103 U. S. 11.

⁷ *State v. Knight*, 2 Hayw. (N. C.) 109.

⁸ See MINOR, CONFLICT OF LAWS, § 203.

to be exercised through its own courts. Neither the common law, nor general principles of justice, give a private person the right to punish except in certain limited cases, such as that of parent and child, or school-master and pupil; so the right, when given, should be strictly construed and limited closely to the purpose intended by the statute. It is submitted, therefore, that any statute imposing upon a defendant a penalty which is not recompense for damage he has caused is a penal statute not properly enforceable in a foreign state.⁹

RECENT CASES.

AGENCY — AGENT'S LIABILITY TO THIRD PARTIES — WHETHER LIABLE FOR NONFEASANCE. — The defendant, an agent of a telephone company, was charged with the duty of inspecting and repairing its poles. As a result of his negligence in discharging these duties a pole fell and injured the plaintiff. *Held*, that the plaintiff may recover. *Murray v. Cowherd*, 148 Ky. 591, 147 S. W. 6.

The court refuses to follow the usual distinction between misfeasance and nonfeasance, and maintains that in each case the agent is guilty of a breach of duty to a third person. There is a principle in criminal law that the failure to perform a legal duty, such as that of an agent to his master, has the legal effect of an act, and if injury results therefrom the agent may be liable. *Regina v. Lowe*, 3 C. & K. 123. There, however, the question is merely one of punishing a wrongful act causing an injury. In torts a duty to the plaintiff is also necessary. It is a well-settled rule that there is no duty to act affirmatively unless the parties are in some peculiar relationship. See *Sweeney v. Old Colony, etc. R. Co.*, 10 Allen (Mass.) 368. A man need only be careful that the forces he sets in motion do not injure anyone. *Delaney v. Rochereau*, 34 La. Ann. 1123. The Kentucky court seems to regard the breach of any duty as equivalent to a breach of duty to the plaintiff. See *Drake v. Hagan*, 108 Tenn. 265, 67 S. W. 470. If this doctrine is carried to its logical conclusion a failure to perform any contract might subject a man to a multitude of tort actions.

BANKRUPTCY — DISCHARGE — EFFECT ON ASSIGNMENT OF EXPECTANCY. — An heir apparent assigned his bare expectancy as security for a loan. Later he was discharged in bankruptcy. Thereafter, upon the death of his ancestor, he succeeded to a share of her estate. *Held*, that equity will enforce the assignment. *Bridge v. Kedon*, 126 Pac. 149 (Cal.).

At common law an expectation of acquiring property was not recognized as a subject of transfer. *Lunn v. Thornton*, 1 C. B. 379; *Wheeler's Executors v. Wheeler*, 2 Metc. (Ky.) 474. But see *Buddle v. Green*, 27 L. J. Ex. 33, 34; *Jones v. Webster*, 48 Ala. 109, 112. Equity, however, will enforce the assignment of an heir's expectancy when fair to do so. *Hobson v. Trevor*, 2 P. Wms. 191; *Clendenen v. Wyatt*, 54 Kan. 523. *Contra*, *McCall v. Hampton*, 98 Ky. 166. On one view, it operates as a present equitable transfer of the expectancy. See 3 POMEROY, EQUITY JURISPRUDENCE, §§ 1271, 1288. By the better view, equity simply enforces a contractual duty to convey the property providing it is acquired. *Carleton v. Leighton*, 3 Meriv. 667. See *Taylor v. Swafford*, 122 Tenn. 303, 307-312, 123 S. W. 350, 351-352. Clearly the substantial

⁹ See MINOR, CONFLICT OF LAWS, § 10, pp. 23, 24. Cf. *Pickering v. Fisk*, 6 Vt. 102; *Blaine v. Curtis*, 59 Vt. 120, 7 Atl. 708; *Indiana v. John*, 5 Ham. (Ohio) 217.